IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 32681

STATE OF IDAHO,	)	**2008 Unpublished Opinion No. 482**
	)	
Plaintiff-Respondent,	)	**Filed: May 29, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
RAYMOND H. WEST,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge.

Judgment of conviction for concealing a dangerous weapon while in a motor vehicle and possession of a controlled substance with intent to deliver, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Thomas Tharp, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Raymond H. West appeals from his judgment of conviction for concealing a dangerous weapon while in a motor vehicle and his judgment of conviction for possession of a controlled substance with intent to deliver. Specifically, West asserts that the district court erred in denying his motion to suppress evidence obtained after a traffic stop. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

At nighttime on January 15, 2007, an officer stopped West after observing him drive a pickup at a speed of 33 mph on a road with a speed limit of 25 mph. The officer testified at the preliminary hearing that, as he approached West's pickup with his flashlight, he recognized West as a member of a motorcycle gang whose members frequently carried concealed weapons. The officer also observed a "large bowie knife" attached to the glove box area on the passenger side

of the vehicle. The officer requested West's driver's license, registration, and proof of insurance. While waiting for West to produce those items, the officer asked West if he had any other weapons and, if so, whether he had a concealed weapons permit. West replied that he had a handgun in the vehicle and that his concealed weapons permit had expired. The officer asked to see the handgun, and West retrieved a .22 caliber handgun from a boot on the floorboard and told the officer that it was loaded. The officer returned to his patrol car and verified that West's concealed weapons permit had expired. The officer asked West to exit the pickup and asked West if he had any other weapons. West replied that there was another gun in the other boot, which the officer retrieved and determined to be a pellet gun.

The officer arrested West and searched the vehicle with the assistance of additional officers who had arrived at the scene. The officers found methamphetamine, cash, and other drug-related items. Officers subsequently obtained a search warrant for West's house, where they discovered scales, packaging materials, and drug paraphernalia. The state charged West with concealing a dangerous weapon, the .22 caliber handgun, while in a motor vehicle, I.C. § 18-3302(9), and possession of methamphetamine with intent to deliver, I.C. § 37-2732(a)(1)(A). West filed a motion to suppress the evidence found in his vehicle. West asserted that the officer failed to provide him with *Miranda*[1] warnings prior to questioning him regarding weapons in his pickup, asked questions beyond the scope of the stop for his speeding violation, and detained him longer than necessary to effectuate the purpose of the stop. The district court denied West's motion to suppress. West proceeded to trial, and a jury found him guilty as charged. West appeals.

II.
STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*,

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.
ANALYSIS

West asserts that the district court erred in denying his motion to suppress because the officer impermissibly questioned West as to whether he possessed any weapons in addition to the bowie knife strapped to the exterior of the glove compartment in his pickup. According to West, the officer violated the Fourth Amendment of the United States Constitution by expanding the scope of the traffic stop with questions unrelated to the purpose of the stop and violated the Fifth Amendment of the United States Constitution by failing to provide West with *Miranda* warnings prior to questioning him regarding weapons in the pickup.[2]

A. Fourth Amendment

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286. Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.* An investigative detention based on reasonable suspicion must be conducted in a manner that is reasonably related in scope to the circumstances which justified the interference in the first place. *Terry*, 392 U.S. at 20-21; *Florida v. Royer*, 460 U.S. 491, 500 (1983); *State v. Stewart*, ___ Idaho ___, ___, 181 P.3d 1249, 1252-53 (Ct. App. 2008). Such a detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *State v. Roe*, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004); *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct. App. 2002). The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of

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[2] West has not renewed his argument raised below that the officer detained him for an unreasonable period of time to effectuate the purpose of the stop. West has therefore waived that issue on appeal. *See State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

each case. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *State v. Parkinson*, 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct. App. 2000). *See also Stewart*, ___ Idaho at ___, 181 P.3d at 1253.

The district court ruled that the officer did not violate West's Fourth Amendment rights by questioning him regarding weapons after stopping him for speeding because the officer questioned West regarding weapons out of concern for officer safety. The district court ruled that, although the questioning was unrelated to the initial purpose of the stop, the scope of the stop expanded when the officer recognized West as a member of a motorcycle gang and observed the large bowie knife.

We conclude that, even if the officer's questioning was unrelated to the purpose for the stop, it did not render the detention unreasonable. In *Stewart*, this Court recently held that "under current United States Supreme Court interpretation, when a suspect is otherwise being reasonably detained, the Fourth Amendment is not infringed by the officer's interrogating the suspect about possible criminal activity unrelated to the justification for the detention." *Stewart*, ___ Idaho at ___, 181 P.3d at 1255. General questioning on topics unrelated to the purpose of the stop is permissible so long as it does not expand the duration of the stop. *Id. See also Parkinson*, 135 Idaho at 362, 17 P.3d at 306; *State v. Silva*, 134 Idaho 848, 853, 11 P.3d 44, 49 (Ct. App. 2000). The officer testified at the preliminary hearing and at the suppression hearing that he posed the questions now challenged by West while waiting for West to retrieve his driver's license, registration, and proof of insurance.[3] Furthermore, West does not assert that the officer's questions impermissibly expanded the duration of the stop. The questions did not impermissibly expand the duration of the detention and, therefore, did not render the detention unreasonable.

Where a ruling in a criminal case is correct, though based upon an incorrect reason, it still may be sustained upon the proper legal theory. *State v. Pierce*, 107 Idaho 96, 102, 685 P.2d 837, 843 (Ct. App. 1984). Without deciding whether the district court's theory was correct, we hold that the district court reached the correct result in ruling that the officer's questions regarding additional weapons in West's vehicle did not violate West's Fourth Amendment rights.

B. Fifth Amendment

In order to effectuate the Fifth Amendment privilege against compulsory self-incrimination, police officers must inform individuals of their right to remain silent and their

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[3] The district court only set forth a brief summation of the facts in its order denying the motion to suppress and did not directly address the timing of the officer's questions regarding additional weapons. We therefore rely on our independent review of the testimony in the record.

right to counsel before conducting a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *State v. Albaugh*, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999). This Court, in *State v. Medrano*, 123 Idaho 114, 844 P.2d 1364 (Ct. App. 1992), set forth the analysis to be used when determining whether a given defendant is "in custody":

> *Miranda* warnings are triggered by custodial interrogation. *See State v. Ybarra*, 102 Idaho 573, 576, 634 P.2d 435, 438 (1981). The United States Supreme Court equated custody with a person being "deprived of his freedom by the authorities in any significant way." *Miranda*, 384 U.S. [436, 478 (1966)]. This test has been refined to mean when a person's freedom of action is "curtailed to a 'degree associated with formal arrest.'" *State v. Myers*, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990) (citing *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 3150, 82 L. Ed. 2d 317 (1984)). The Court, in *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 713, 50 L. Ed. 2d 714 (1977) . . . instructed that the "test is an objective one based on the surrounding circumstances." To determine if a suspect is in custody, this Court, subsequent to *Mathiason*, adopted the Supreme Court's test that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Myers*, 118 Idaho at 611, 798 P.2d at 456 (quoting *Berkemer*, 468 U.S. at 442, 104 S. Ct. at 3151).
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> . . . We must review the "totality of all the circumstances" that are presented in the record. *See Ybarra*, 102 Idaho at 578, 634 P.2d at 440 (citing *United States v. Mendenhall*, 446 U.S. 544, 553, 100 S. Ct. 1870, 1876, 64 L. Ed. 2d 497 (1980)); see also WILLIAM E. RINGEL, SEARCHES & SEIZURES ARRESTS AND CONFESSIONS § 27.3(a)-(c) (circumstances to be considered when determining whether a defendant is in custody are: location of interrogation, conduct of the officers, nature and manner of the questioning, time of interrogation, and other persons present).

Id. at 117-18, 844 P.2d at 1367-68.

In the present case, the district court correctly ruled that West was not in custody at the time the officer initially asked West about weapons in the pickup. Roadside questioning of a motorist pursuant to a routine traffic stop does not generally amount to a "custodial interrogation" for *Miranda* purposes. *Albaugh*, 133 Idaho at 592, 990 P.2d at 758. Even a traffic stop that includes field sobriety tests does not necessarily amount to a custodial detention for *Miranda* purposes. *See State v. Pilik*, 129 Idaho 50, 52, 921 P.2d 750, 752 (Ct. App. 1996). West has not demonstrated that his traffic stop was anything other than routine at the time the officer asked questions regarding weapons in his pickup. This is not a case where the questions were posed in a coercive manner during a traffic stop with heavy police presence or while the suspect was restrained in a police vehicle. *See State v. Frank*, 133 Idaho 364, 369, 986 P.2d

1030, 1035 (Ct. App. 1999); *Meyers*, 118 Idaho at 611, 798 P.2d at 456. Rather, the questions challenged by West were posed while the officer was alone at the scene and while West was still seated in his pickup, retrieving his driver's license, registration, and proof of insurance. At the time of the challenged questions, West was not in custody for *Miranda* purposes. The district court therefore properly concluded that the absence of *Miranda* warnings did not violate West's Fifth Amendment rights.

IV.
CONCLUSION

Because the officer's questions regarding weapons in West's pickup did not violate West's rights under the Fourth or Fifth Amendments to the United States Constitution, the district court ruled correctly when it denied West's motion to suppress. We therefore affirm West's judgment of conviction for concealing a dangerous weapon while in a motor vehicle and possession of a controlled substance with intent to deliver.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**